International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, Its Territories and Canada, Local 720, AFL–CIO, CLC (Tropicana Las Vegas, Inc.) *and* Gary Elias. Case 28–CB–131044

March 30, 2016

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS MISCIMARRA AND MCFERRAN

On June 23, 2015, Administrative Law Judge Kenneth W. Chu issued the attached decision. The Respondent filed exceptions and a supporting brief, the General Counsel and the Charging Party each filed an answering brief, and the Respondent filed a reply brief to each answering brief. The Charging Party filed cross-exceptions and a supporting brief, the Respondent filed an answering brief, and the Charging Party filed a reply brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions, cross-exceptions, and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order as modified and set forth in full below.[2]

ORDER

The National Labor Relations Board orders that the Respondent, International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, Its Territories and Canada, Local 720, AFL–CIO, CLC, Las Vegas, Nevada, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Refusing to make available to Gary Elias the hiring hall referral information requested in his letters dated February 20, 2014, and April 24, 2014.

(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Furnish Gary Elias with the hiring hall referral information requested in his letters dated February 20, 2014, and April 24, 2014.

(b) Within 14 days after service by the Region, post at its Las Vegas, Nevada office copies of the attached notice marked "Appendix."[3] Copies of the notice, on forms provided by the Regional Director for Region 28, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to members are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its members by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 28 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. March 30, 2016

Mark Gaston Pearce, Chairman

Philip A. Miscimarra, Member

[1] We agree with the judge that the Respondent violated Sec. 8(b)(1)(A) of the Act by failing and refusing to provide the information requested by the Charging Party. Even applying a more stringent standard articulated in some cases, we agree with the judge that the Charging Party has shown a reasonable belief that the Respondent treated him unfairly. See, e.g., *Boilermakers Local 197 (Northeastern State Boilermaker Employers)*, 318 NLRB 205, 205 (1995); *Operating Engineers Local 12 (Nevada Contractors Assn.),* 344 NLRB 1066, 1066 fn. 1 (2005). In addition, we note that the requested information is relevant because it would help ascertain the validity of the Charging Party's reasonable belief that the Respondent was operating the hiring hall improperly, including with respect to the general reliability of the Respondent's automated dispatch system.

[2] We shall modify the judge's recommended Order to conform to the Board's standard remedial language. We shall also substitute a new notice that reflects those changes.

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Lauren McFerran, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain on your behalf with your employer

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to make available to you relevant requested hiring hall referral information.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights listed above.

WE WILL make available to Gary Elias the hiring hall referral information requested in his letters dated February 20, 2014, and April 24, 2014.

INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES, MOVING PICTURE TECHNICIANS, ARTISTS, AND ALLIED CRAFTS OF THE UNITED STATES, ITS TERRITORIES AND CANADA, LOCAL 720, AFL–CIO, CLC

The Board's decision can be found at www.nlrb.gov/case/28-CB-131044 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273–1940.

Larry A. Smith, Esq., for the General Counsel.
Sean D. Graham, Esq. (Weinberg, Roger & Rosenfeld), for the Respondent.

DECISION

STATEMENT OF THE CASE

KENNETH W. CHU, Administrative Law Judge. This case was tried in Las Vegas, Nevada, on February 24, 2015. The charge was filed on June 18, 2014,[1] and the Regional Director of Region 28 of the National Labor Relations Board (NLRB or Board) issued the complaint on August 29 (GC Exh. 1).[2]

The complaint alleges that the International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists, and Allied Crafts of the United States, its Territories and Canada, Local 720, AFL–CIO (CLC) (Respondent or IATSE) violated Section 8(b)(1)(A) of the National Labor Relations Act (Act) when it failed and refused to provide requested information to Gary and Tina Elias.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION AND UNION STATUS

Tropicana Las Vegas, Inc. (Tropicana) is a corporation engaged in the hotel and gaming industry in Las Vegas, Nevada. In 2013 and 2014, Tropicana had gross annual revenues from sales and services in excess of $500,000 and purchased goods from states other than the State of Nevada in excess of $50,000 (Tr. 23, 24, GC Exh. 5). As such, I find that Tropicana is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. The Respondent has a collective-bargaining relationship with Tropicana as well as with other employers. Accordingly, I also find, as the Respondent admits, that at all times material, the Respondent is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

a. The Respondent's referral service

The Respondent operates a hiring service that refers skilled labor to perform stagehand work for signatory employers at

[1] All dates are in 2014 unless otherwise indicated.

[2] Exhibits for the General Counsel are referenced as "GC Exh." and "R. Exh." for Respondent's exhibits. Posthearing briefs are referenced as "GC Br." for the General Counsel and "R. Br. for the Respondent. The transcript is abbreviated as "Tr."

musicals and other events in the Las Vegas, Nevada area. It is not disputed that the Respondent has collective-bargaining agreements with several signatory employers, including Tropicana. On June 1, 2007, the Respondent entered into a collective-bargaining agreement with Hotel Ramada of Nevada d/b/a Tropicana Resort and Casino and has been recognized as the exclusive collective-bargaining representative by Hotel Ramada and by its successor, Tropicana Las Vegas, Inc. On January 1, 2014, the Respondent entered into a collective-bargaining agreement with Tropicana Las Vegas, Inc. through December 31, 2018 (GC Exhs. 6, 7).

Julie Della Penna (Penna) testified that she is the vice-president for HR at the Tropicana. Penna stated that during all times relevant to this complaint, Tropicana has a collective-bargaining agreement with the Respondent (Tr. 25–27). Article 4.03 (a) of the collective-bargaining agreement (GC Exh. 7) requires

> The Employer shall first call the dispatching office of the Union for such applicants as it may, from time to time need, and the dispatching office shall refer to the Employer in accordance with the order of preference set forth in Section 4.04 the requested number of applicants whose registration records indicate they are competent and qualified to perform the work involved in the classifications to be filled. It shall be the Employer's responsibility when requesting applicants to state the qualifications applicants are expected to possess and the functions they will be expected to perform. The Employer shall designate the departments in which the employee is expected to perform his/her duties, but this designation shall not be construed as prohibiting a change in assignments.

Article 4.03 (e) states, in part

> If, within forty-eight (48) hours of the time the Employer requests applicants to report, the dispatch office has failed to refer the required number of qualified applicants requested, the Employer may hire employees from any other source…

Penna testified to three hiring procedures with the Respondent. Penna described the first hiring procedure as an "open call," whereby Tropicana would post vacancies for full-time positions with the Respondent and applicants would be referred to the employer by IATSE. Penna testified that Tropicana may also request applicants on an "on-call" basis to fill a temporary vacancy and third, an applicant may be requested by name. Penna said that she has seen similar language in collective-bargaining agreements between other employers and the Respondent, including the Excalibur Hotel and Casino (Tr. 27–31).

Penna is not fully familiar with the Respondent's referral system, but understood that applicants are referred based on their position on one of two lists (Tr. 30, 31). Section 4.04 of the collective-bargaining agreement states, in part

> (a) The dispatching office shall refer from among those entered on its job referral lists in the established order of preference the required number of applicants who most nearly meet the qualifications required by the Employer. Subject to the provisions of Section 4.03, applicants shall be referred in the order of their dates of registration in the affected classifications. Referrals of applicants shall be on a non-discriminatory basis and, in accordance with applicable laws, shall not be based upon, nor in any way affected by, Union membership, by-laws rules, regulations, constitutional provisions, or any other aspect or obligation of Union membership, policies or requirements, nor upon the individual's race, religion, color, age, sex, sexual orientation, national origin, ancestry, or disability.
>
> (b) Order of Preference. Registrants on referral List "A" shall be given preference over registrants on all other lists. Registrants on referral List "B-1" shall be given preference over all registrants on referral List "B-2". Within any referral list registrants shall be referred on a first-registered, first-out basis.
>
> Eligibility for Registration. List A. Applicants who are available for employment and who are able to demonstrate that in the three (3) year period immediately preceding their date of registration they have accumulated at least two thousand (2,000) hours of experience with an Employer who is signatory to a collective bargaining agreement with the Union in the classification specified by the requesting Employer.
>
> The three (3) year requirement set forth above will not be interpreted to preclude granting List "A" status to registrants for other classifications for which they have been previously dispatched to the Employers operating in Clark County, Nevada.
>
> List "B'. Referral List "B" shall be divided into two (2) parts: List "B-1" and List "B-2".
>
> Applicants shall be eligible for registration on List "B-1" who are available for employment and who are able to demonstrate that they meet the requirements of any of the following subparagraphs:
>
> i. Accumulation of at least one thousand (1,000) hours of experience in the classification specified by the requesting Employer within the three (3) year period immediately preceding their date of registration, or
>
> ii. Accumulation of at least one thousand (1,000) hours of employment experience utilizing the basic skills of the classification specified by the requesting Employer within the three (3) year period immediately preceding their date of registration, or
>
> iii. Successful completion of a basic training program conducted under the auspices of the Nevada Resort Association - IATSE Local 720 Apprentice and Journeyman Training and Education Trust.

Dan'L Cook (Cook) testified that he is and has been the union president for the Respondent for 7 years and is familiar with the IATSE referral service. Cook said that referents for jobs are from five crafts consisting of the theatrical stage employees; audiovisual technicians and projectionists; the film and television workers; the industrial trade show workers; and the wardrobe, hair and makeup employees. Cook said that over 2200 individuals from these crafts applied for employment through the Respondent's referral service (Tr. 35, 42, 43). Cook is familiar with the referral service and stated that there are two lists for employment (lists A and B), with referents on list A are

given priority. Cook said that the order of preference is used with Tropicana pursuant to their collective-bargaining agreement. Cook confirmed that the Respondent has similar order of preference language for referring applicants with over 40 employers. Cook testified that employers with similar order of preference language as in the Tropicana collective-bargaining agreement under section 4.04 are required to post vacancies with the Respondent and such contract language is enforceable through grievances if an employer fails to follow this referral process (Tr. 43–46).

b. The February 20 information request

Gary Elias has been a member of IATSE Local 720 for over 20 years.[3] During this time, he has been employed by the Respondent and has filed charges and grievances on behalf and against the Respondent. In particular, Gary Elias testified that he had previously filed a charge against the Respondent regarding the refusal of the Respondent to provide hiring hall records. Gary Elias said that the charge was filed over 12 years ago and resulted in a formal settlement with the Respondent which allowed him to inspect and make copies of the hiring hall referral records (Tr. 77–79).

Gary Elias is a referent with the Respondent's hiring service and is on list A in the order of preference. His list A referent status is not in dispute (Tr. 49). Gary Elias holds over 23 skill-set cards and is a list A referent for audio/visual, electrical, and forklift equipment work (Tr. 77).[4]

Gary Elias testified to his "reasonable suspicions" of irregularities in the hiring hall service with referrals for jobs for the Phantom of the Opera musical that was showcased at the Venetian Hotel and Casino. He testified that the LV Theatrical Group, Inc. staged the musical and had a collective-bargaining agreement with the Respondent with similar language in the order of preference of skilled labor on list A and list B (GC Exh. 11). Gary Elias said that he saw a Facebook page allegedly posted on September 20, 2013, by Glenn Snyder, who was a head carpenter on the musical production, which seems to indicate that he was responsible for hiring the skilled labor on the Phantom production (GC Exh. 10). Gary Elias testified that this would have been in violation of article 5.08 of the collective-bargaining agreement between the Respondent and the LV Theatrical Group (Tr. 82–89).

Concerned over this hiring irregularity, Gary Elias requested the following information from the Respondent in a letter dated February 20 (GC Exh. 9),

> In order to determine if I have been discriminated against, I hereby request inspection of and copies of the hiring hall referral records as follows:
>
> All referrals to the removal of the show (load out) of LV Theatrical Group, it's successors and assigns, (Phantom of the Opera) on or about September 2, 2012: including but not limited to the names, addresses, phone numbers, open call or letter of request and list status of those referred.
>
> Please schedule a time when I may inspect these records and receive copies of them within 15 days of the above date of this letter or provide a reasonable date when I will be able to do so.
>
> I agree to pay the cost of copying those records up to $5.00. Should the cost exceed that, please notify me with the expected cost.

Gary Elias gave the February 20 information request to a receptionist working at the Respondent's office. Although Gary Elias penned in the name of "Melissa" who had allegedly received his request for information, the document was actually given to an unidentified person. Gary Elias asked that his information request be given to Ron Poveromo[5] (Tr. 80–82). It is not disputed that the Respondent received the February 20 information request.

The Respondent provided five pages of records for the Phantom musical. The Respondent did not provide a list status of referrals for list A and did not provide any of the phone numbers or address information of the referents (R. Exh. 1). Gary Elias complained that the information was incomplete because the names did not include the addresses and phone numbers. He also maintained that the names on the lists were not subdivided into list A, B, B1, and B2. Gary Elias testified that since he is on list A, the requested information would shed some light as to whether his name was bypassed for a referent lower on the order of precedence (Tr. 89–91).

Cook testified that a partial list was provided but the addresses and phone numbers of the referents on the list were not included. Cook maintained that phone numbers and address information have never been provided by the Respondent. He said that if a member needed an address or number of another individual, the Respondent would inform that person and leave it up to him/her to provide the address or phone number to the inquiring person (Tr. 50–53).

It is not clear when Gary Elias received the partial information. Gary Elias testified that he subsequently spoke with Jeff Foran, the business representative at the time, about the missing information. On March 3, Gary Elias emailed Foran to reiterate their conversations that the information request was for names, addresses, and phone numbers. Foran replied by email on the following day and informed Gary Elias that he will "work on this tomorrow" after his union meeting (Tr. 91, 92; GC Exh. 12). The Respondent never provided the addresses and phone information of the referents.

c. The April 24 information request

Gary Elias testified he made a second information request on April 24 because his first request was incomplete (GC Exh. 13). The April 24 letter also requested information on a nonreferral regarding Tina Elias.[6] The Eliases were concerned over her nonreferral after her work on the Phantom of the Opera ended in September 2012 (Tr. 92, 93). Tina Elias testified to receiv-

[3] Gary Elias testified that he has been a member of Local 720 for "25 years as of August" (2014) (Tr. 76). It is not clear if he is a member at this time.

[4] As an example, Gary Elias holds a skill card as a forklift operator referenced in GC Exh. 8.

[5] At the time, Poveromo was the secretary-treasurer for Local 720 (Tr. 54).

[6] Tina Elias is the spouse of Gary Elias.

ing only two letters of request but no open calls from the end of her work on Phantom on September 2, 2012, through April 28 (Tr. 144, 145).[7] The April 24 information request stated the following

> Dear Jeff Foran:
>
> You have been repeatedly advised the hiring hall records provided per my February 20, 2014 request were incomplete. In the spirit of cooperation I reduced that request to three job numbers. On March 4, 2014 you said you would have to work on them the following day.
>
> You have stated that past list status of those referred is difficult to determine. A referral log similar to the paper referral log formally used by Local 720 should be in existence particularly if kept on the automated dispatch system now in use. It's noted that Local 720 has not to my knowledge tracked hours worked but rather tracked individual earnings and divided them by the prevailing rate. Those earnings records would therefore become necessary should Local 720 fail to establish past list status in hiring hall records to determine past order of precedence.
>
> In conversation on or about March 27, 2014, you stated that certain part time employees had never been signed out therefore (sic) they were called for several open positions when Tina Elias was not. This is mostly irrelevant in the open call rotation because that part time employment should have been received from via a Letter of Request from the employer. That would only affect the open call rotation if the next referents were working at the exact same time requested via a Letter of Request. Additionally the Local has long held that the employer not the Local determines the Letter of Request. It's also long held even if the referent has full time work or part time work, the Local can't discriminate based on Letters of Request or open calls. The Local MUST dispatch those referents on Letters of Request and open calls for which they are available. Only the union is charged with running a non-discriminatory (sic) hiring hall, not the employer. The Local has long signed referents out based on only on their availability but does not remove them from the open skill card rotation. To do so would discriminate against those which the employer and not the Local has sole control.
>
> On or about April 10, 2014 you stated that Tina Elias's phone number had been changed without her knowledge or request and that the automated dispatch system had been calling the wrong number. You further stated that you would be working over the weekend to resolve these issues. No further information has been provided as of the date of this letter despite several attempts to resolve this matter on our part.
>
> You are reminded of the National Labor Relations Board Order that provides that Local 720 must allow Gary Elias and Tina Elias to inspect and receive copies of hiring hall records. The following is a joint request in keeping with that order. Given our discussion now it's a matter of not only who actually took the work but who was called for it. Therefore (sic) our request is expanded. The Local's refusal to provide names addresses and phone numbers list status and a log of those called is unreasonable given its computer dispatch system.
>
> In order to determine if we have been discriminated against, we hereby request inspection of and will request copies as needed of the hiring hall referral records as follows:
>
> All referrals for bid slips for all positions for which Gary Elias and Tina Elias hold skill cards to Mama Mia at the Tropicana on or about January 8, 2014. Including but not limited to the names, addresses, phone numbers, and list status of those referred. Please note that names, addresses, phone numbers and list status are absolutely requested.
>
> From the date of our written letter on or about September 3, 2012, a copy of that letter. All CALLS, and referrals for which we have skill cards. Including but not limited to the names, addresses, phone numbers, open call or letter of request and list status of those CALLED. Please note that names, addresses, phone numbers and list status are absolutely requested. With regard to Gary Elias this would temporary end with his open call on October 18, 2012 with regard to open calls but would include those calls for which any bid slips were given for any referrals for bid slips to employers for which he has skill cards. Please also provide any calls for his forklift skill card from the date of my re- certification in December 2013 and January 2014. With regard to Tina Elias this would include all open and letter of request calls and bid slips for any Wardrobe card she has signed in to present, noting that she temporary signed out her Stagecraft cards.
>
> Please schedule a time when we may inspect these records and receive copies of them as needed within 15 days of the above date of this letter or provide a reasonable date when we will be able to do so.
>
> We agree to pay the costs of copying those records as we require during that inspection. Please notify us of the expected cost per page.
>
> Sincerely.
>
> Gary S. Elias Tina Elias
>
> Delivered by hand.

Gary Elias gave the request to Poveromo on April 24. Gary Elias said he was willing to negotiate with Poveromo over the information being requested. Gary Elias thought that Poveromo was amendable to his suggestion to negotiate. Gary Elias also requested information on the Mama Mia musical located at the Tropicana because his spouse was not referred despite being on list A. Gary Elias noted that Tina Elias even-

[7] Tina Elias is also a list A referent, particularly for wardrobe work (Tr. 50).

tually received a bid slip after he intervened on her behalf by contacting Foran about her not receiving a bid (Tr. 93–97).

Tina Elias testified that she is on list A and has a wardrobe skill card but was not called for the Mama Mia musical (Tr. 128, 129). Tina Elias also stated she was never informed about employment for the Jubilee show at the Bally's Hotel and Casino. Tina Elias testified that she had several Facebook text conversations with Karen Bauer (Bauer), a coworker. Tina Elias asked Bauer whether she received any dispatch calls for job referrals. Bauer said she received a call for a job on at the Jubilee on March 21. Tina Elias replied to Bauer that she never got that call. Tina Elias testified that the Respondent would send out automated calls (sometimes referred as a Blast) to referents for job openings. Tina Elias never received the automated message from the Respondent that work was available at the Jubilee.

Bauer also informed Tina Elias in another Facebook conversation on January 8 that Bauer received a dispatch call for a bid assignment on the Mama Mia musical. Tina Elias complained to Bauer that she had not received a referral call from the Respondent since the Phantom musical had closed (in September 2012). Tina Elias testified she was suspicious that the automated dispatch system was not working correctly because she never received a bid call for Mama Mia and Jubilee although all List A referents should have been called for open positions (Tr. 131–136: GC Exhs. 14, 15, 16).

I find that the Eliases have demonstrated a reasonable suspicion that they may have been discriminatory bypassed for the Phantom of the Opera and the Mama Mia musicals. Tina Elias testified she never received another referral after the end of the Phantom show. With regard to the Mama Mia musical, she testified receiving a phone text from a coworker who was referred for a wardrobe job even though he did not have a wardrobe skill card and was informed by another coworker that dispatch calls were made to others for the Jubilee show but not to her. Gary Elias testified he wanted information on all dispatch calls made for referrals on Mama Mia because Foran had previously related to him that the Respondent could not reach Tina Elias because she had allegedly changed her phone number. Gary Elias also requested information on forklift referrals because he holds a forklift operator skill card but was never referred for a trade show that required forklift operators (Tr. 97, 98).

The Eliases met with Cook, Foran, and Poveromo on April 28 to discuss the April 24 information request. Gary Elias observed that Foran had a handwritten list and was allegedly prepared to hand it over to him. Gary Elias requested that Foran initial the list before handing it over. According to Gary Elias, Cook "snatched it" as Foran was about to slide the list towards Gary Elias. Cook said he needed to first review the document. Cook then stated to the Eliases that he had a problem with giving out the addresses and phone numbers of the referents on the list (Tr. 111–114).

Tina Elias recalled that Foran told them at the meeting that he had the information that was requested. Tina Elias testified that Cook seemed agitated and grabbed the list away to review it. Tina Elias remembered Cook saying "I'll get back later" about the list (Tr.136, 137).

Cook testified he was aware of the Eliases' second information request. He stated that he met with the Eliases on April 28 and provided a partial response to the request. Cook said that Gary Elias had reviewed the list, but he did not turn the document over to the Eliases. Cook said that the phone numbers and addresses were not shown to the Eliases (Tr. 54, 55, 64, 65). Cook said that the Respondent never disclose phone numbers and addresses because of a privacy issue to protect the referents and union members (Tr. 68, 69). Upon my examination, Cook admitted that it would be difficult for someone on the referral list A to determine whether a referent on list B was called first (without actually having the information to review the referents on the lists) but surmised that the individual could look at his/her dispatch information for the answer (Tr. 63, 64). The Eliases never received the list or any other information on this request.

Discussion and Analysis

The counsel for the General Counsel alleges that the Respondent operates an exclusive hiring referral service that provides skilled laborers to perform stagehand work with signatory employers in the Las Vegas, Nevada area. The counsel for the General Counsel maintains that the signatory employers are contractually obligated to utilize the Respondent's referral service to request employees to perform bargaining unit work and to provide the Respondent with an exclusive opportunity to fill the requests before the employers could hire from other sources.

The counsel for the General Counsel argues that the Respondent has a duty of fair representation toward all eligible users of an exclusive hiring hall, including providing relevant information requested by a referent. The counsel for the General Counsel alleges that the Respondent violated Section 8(b)(1)(A) of the Act when it failed and refused to provide relevant information requested by the Eliases.

It is well established that, as an operator of an exclusive hiring hall, a union owes a duty of fair representation to all applicants using that hall. *Radio-Electronics Officers Union,* 306 NLRB 43, 44 (1992); *Breininger v. Sheet Metal Workers Local 6*, 493 U.S. 67 (1989). As part of its duty of fair representation, a union has an obligation to operate the exclusive hiring hall in a manner that is not "arbitrary or unfair." Id. Along with that duty, a union is also required to provide applicants for employment with information sufficient so they can intelligently challenge the hiring hall structure and determine whether it operates fairly. Therefore, a union violates the Act when it arbitrarily denies a request for job referral information if the request is reasonably directed toward ascertaining whether the user has been treated fairly.

The Respondent presents a myriad of defenses for refusing and failing to provide the information requested, to wit: (A) No duty of fair representation in a right-to-work state; (B) The General Counsel failed to establish jurisdiction over any employer other than the Tropicana Las Vegas, Inc.; (C) The Respondent does not operate an exclusive hiring hall; (D) The charging party's requests are moot because the Board has investigated the charging party's allegations that he has been discriminated against and concluded that there is no evidence of

discrimination; (E) The complaint is barred by the statute of limitations contained in Section 10(b) of the Act; (F) Referents are not entitled to information to determine whether there has been a violation of the Act; (G) The General Counsel failed to establish a compelling government interest in the forced disclosure of hiring hall users' telephone numbers and personal addresses to a private individual that outweighs the substantial First Amendment association privacy rights at issue; (H) The General Counsel failed to establish that the Respondent violated the duty of fair representation; (I) Disclosure of phone numbers, names and addresses interferes with the right to refrain contained in Section 7 of the Act; (J) The allegations pertaining to the February 20 request must be dismissed because the Respondent provided the charging party with all requested information except telephone numbers and addresses; (K) The allegations in the complaint pertaining to nonparty Tina Elias must be dimissed in their entirety; (L) The Respondent has no obligation to provide the charging party a copy of correspondence authored by the charging party in his April 24 request; (M) The April 24 request is overbroad and unintelligible and was drafted in an overboard fashion for retaliatory reasons; and (N) The proviso of Section 8(b)(1)(A) of the Act protects the Respondent's actions (see, R. Br.).

The Respondent's defenses are addressed in seriatim

A. No Duty of Fair Representation in a Right-to-Work State.

The Respondent argues that it has no duty to provide Gary Elias with referral records because such obligation solely arises from the duty of fair representation, which cannot apply in a right-to-work state as to nonmembers who refused to pay for representation.

I find this argument without merit. The Respondent cites no Board authority holding that there is no duty of fair representation of a nonmember in a right-to-work state. In contrast, the Supreme Court and Board decisions have consistently held that a union has a duty of fair representation to members and nonmembers alike. *Breininger*; above; *Vaca v. Sipes*, 386 U.S. 171 (1971); *Radio-Electronics Officers Union*, above.

In my opinion, the duty of fair representation to a nonmember is not removed simply because the Respondent is located in a right-to-work state. In *International Association of Machinists Local 697 (H.O. Canfield Rubber Co. of Virginia, Inc.)*, 223 NLRB 832 (1976), the Board held that a worker in Virginia, a right-to-work state, was unlawfully informed that IAM would not pursue his grievance unless he paid a fee toward the cost of union representation. The employee was not an IAM member, and the local told him his nonmembership was the reason for the union's demand for a fee. The Board held in *Machinists* that "a grievance procedure is vital to collective bargaining and . . . grievance representation is due employees as a matter of right." The Board held that "[t]o discriminate against nonmembers by charging them for what is due them by right restrains them in the exercise of their statutory rights" the IAM violated Section 8(b)(1)(A) of the Act.

Equally applicable here, I find that the Respondent has a duty of fair representation because it gains a thing of value by being allowed the power of exclusive representation over all employees in the bargaining unit whether the employees agree or not, and that value is sufficient compensation for whatever services the Respondent perform for employees. A union has such comprehensive authority vested in it when it acts as the exclusive agent of users of a hiring hall and because the users must place such dependence on the union that there necessarily arises a fiduciary duty on the part of the union not to conduct itself in an arbitrary, invidious, or discriminatory manner when representing those who seek to be referred out for employment by it.

As such, the duty of fair representation is attached because of the exclusiveness of the referral service and is not depended upon the geographic location of the referrals.

B. The General Counsel Failed to Establish Jurisdiction over any Employer other than the Tropicana Las Vegas, Inc.

The Respondent argues that the Board has no jurisdiction over employers that were not named in the complaint, but were involved in the information requested by the Eliases. Essentially, the Respondent maintains that the General Counsel failed to establish that the Board has jurisdiction over any employer other than Tropicana Las Vegas, Inc. who uses the referral system. The Respondent further maintains that even with Tropicana Las Vegas, Inc., the General Counsel had failed to shows that Tropicana was an employer of the bargaining unit employees because there were several subcontractors that actually employed and supervised the unit employees.

I find the Respondent's arguments without merit. With regard to Tropicana Las Vegas, Inc., it is not disputed that the Board has jurisdiction over this employer. The General Counsel established that there is a collective-bargaining agreement between the Respondent and Tropicana Las Vegas, Inc. The collective-bargaining agreement at article 2.02 (GC Exh. 7) defines Tropicana Las Vegas, Inc. as the employer and the type of work for which employees are directly employed by the employer to include

> Stage carpentry installation, operations, maintenance and dismantle
> Stage electrical installation, operations, maintenance and dismantle
> Stage properties installation, operations, maintenance and dismantle
> Stage sound installation, operations, maintenance and dismantle
> Stage automation installation, operations, maintenance and dismantle
> Stage special effects installation, operations, maintenance and dismantle
> Wardrobe, Hair and Make-up
> Convention/Audio Visual installation, operations, maintenance and dismantle
> Lounge installation, operations, maintenance and dismantle

Cook testified that the above are the type of work that the Respondent would refer employees to Tropicana Las Vegas, Inc. for employment. Penna testified that Tropicana Las Vegas, Inc. was the employer and as the employer, it first provides the vacancies for referrals of craft jobs listed in the collective-

bargaining agreement to the Respondent and if Tropicana did not follow the hiring procedure in the agreement, Tropicana would be subjected to grievances filed by the Respondent. Cook also testified that Tropicana Las Vegas, Inc. would be subjected to a grievance for not first posting vacancies with the Respondent. Consequently, while there may be subcontractors involved in the operations of maintaining and dismantling the shows, it is clear that Tropicana Las Vegas. Inc. is the sole employer and was the successor to a prior labor agreement that the Respondent had with Hotel Ramada of Nevada d/b/a Tropicana Resort and Casino.

In contrast, the record shows that when Tropicana Las Vegas, Inc. is clearly not the employer of the unit employees and there is an outside contractor, Tropicana and the Respondent would reach an understanding under a memorandum of agreement as to the parameters of the subcontractor's work responsibilities with the unit employees (GC Exh. 7 at 51). As such, I find that the Board established jurisdiction over Tropicana Las Vegas, Inc. as the employer on all occasions during the time frame that the Eliases requested information about referrals and dispatch records regarding musicals located at the Tropicana Las Vegas, Inc.

I also find that the Respondent's defense that the information requests for referrals and dispatch records pertaining to employers not named in the complaint should be dismissed as without merit.[8] The Board's jurisdiction over the Respondent is not in dispute. Clearly, the only issue is whether the Respondent violated the Act. The Board's jurisdiction over the employers not named in the complaint is unnecessary to determine whether the actions of the Respondent violated the Act.

C. The Respondent Does Not Operate an Exclusive Hiring Hall.

A threshold issue to address is whether the Respondent even operates an exclusive hiring hall, for absent of that showing, the duty of fair representation does not attach. *Teamsters Local 460 (Superior Asphalt)*, 300 NLRB 441 (1990). A union's duty of fair representation derives from its status as the exclusive bargaining representative of employees.[9] *Teamsters Local 519 (Rust Engineering Co.),* 276 NLRB 898, 908 (1985); *Denver Theatrical Stage Employees IASTE Local 7,* 339 NLRB 214, 219 (2003).

The Board has reasoned that a union's monopoly over available jobs, combined with procedures that favor union members or irregularities that result in giving great discretion in referrals to the union agents who run the hall, tends unlawfully to encourage employees to be compliant. *Teamsters Local 460*, above at 441. Thus, a union owes a duty of fair representation in the operation of a hiring hall only if it is the employer's exclusive source of labor. If Local 720 does not operate as an exclusive hiring hall as alleged, it had no duty to provide the information requested. *Electrical Workers IBEW Local 11 (Los Angeles NECA*), 270 NLRB 424, 426 (1984).

The Respondent argues that it is not an exclusive hiring hall because Tropicana may reject referred applicants; it is permitted to issue letters of no rehire to previous employees; may call specific employees by name for jobs; and may hire employees directly for bargaining unit positions (R. Br. at 8). I find no merit to any of the Respondent's arguments that it is not an exclusive hiring hall.[10]

I find that the General Counsel has met his burden in establishing that the Respondent operates an exclusive hiring hall because the Respondent is the initial source for applicants for employment. A union's hiring hall is exclusive if it is an employer's initial or primary source for employees. *Stage Employees IATSE, Local 720 (AVW Audio Visuals, Inc.)*, 341 NLRB 1267 (2004); *Denver Theatrical Stage Employees Union No. 7*, above. Here, Tropicana and other employers must first utilize the Respondent's referral service and may seek applicants from other sources only if it cannot fill the vacancies from the Respondent's referrals. I again credit the testimony of Penna when she stated that the collective-bargaining agreement between Tropicana Las Vegas, Inc. and Local 720 requires the employer to first contact the Respondent's dispatch office for applicants for employment before going to other sources.[11]

Article 4.03 of collective-bargaining agreement supports Penna's testimony and states, "The Employer shall *first* (emphasis added) call the dispatching office of the Union for such applicants as it may, from time to time need . . . ." Penna testified to three different hiring procedures, but in all instances, the job postings and requests for applicants are first passed through the Respondent's hiring hall. In *Denver Stage Employees IASTE Local No. 7*, above, at 216, 217, the Board affirmed the judge in finding that the union operated an exclusive referral service where parties' contract states that the employer "will give the Union first opportunity to furnish, and the union agrees to furnish, applicants for employment with the requisite skills." Here, the exclusiveness of the referral service is further bolster by article 4.03 (e) of the collective-bargaining agreement that gives the Respondent up to 48 hours to refer applicants to Tropicana before the employer may seek other employment sources.

Penna testified she has seen similar language in collective-

[8] As an example, the Respondent argues that the allegation that it failed to provide information on referrals to the Phantom of the Opera musical located at the Venetian Hotel and Casino should be dismissed because the Venetian was not named as an employer in the complaint.

[9] The Respondent does not dispute that it is a labor organization.

[10] The Respondent's insistence that it is not an exclusive hiring hall borders on being specious. Previously Board decisions have found IATSE Local 720 operating an exclusive hiring hall. *Stage Employees IATSE, Local 720 (AVW Audio Visuals)*, above (the Board noted in the case remanded by the United States Court of Appeal for the Ninth Circuit that ". . . a heightened duty of fair dealing applies to the union's operations of an exclusive hiring hall (citing *Jacoby v. NLRB*, 233 F.3d 611 (D.C. Cir. 2000)); and *Stage Employees IATSE, Local 720 (Production Support Services)*, 352 NLRB 1081 (2008) (the Board adopted the decision of the Administrative Law Judge finding that IATSE, Local 720 operated an exclusive hiring hall).

[11] The credibility resolutions herein have been derived from a review of the entire testimonial record and exhibits, with due regard for the logic of probability, the demeanor of the witnesses, and the reasonable inferences that may be drawn from the record as a whole. *Double D Construction Group*, 339 NLRB 303, 305 (2003); *Daikichi Sushi*, 335 NLRB 622, 623 (2001). Credibility findings need not be all-or-nothing propositions—indeed, nothing is more common in all kinds of judicial decisions than to believe some, but not all, of a witness' testimony. *Daikichi Sushi*, above.

bargaining agreements between other employers and the Respondent, including the Excalibur Hotel and Casino. Cook confirmed that employers other than Tropicana have similar language in their collective-bargaining agreements with the Respondent and that such contract language is enforceable through grievances if an employer fails to follow the referral process in the agreement.

The mere fact that Tropicana and other employers may reject a referent for legitimate business reasons does not diminish the Respondent's exclusiveness in referring applicants for employment. In the business world, any employer may reject an unqualified applicant for employment or not to rehire an employee found not to have satisfactory performed on the job. This authority inherent in the responsibilities of being an employer is not demonstratively indicative that the Respondent is not an exclusive hiring hall. Indeed, the collective-bargaining agreement allows for the rejection of referred applicants based upon the judgment of Tropicana as to the competency and qualifications of the applicants. The agreement also allows Tropicana to call applicants by name, but only through the Respondent's referral service and only from the A list. Additionally, Tropicana must wait 48 hours for the Respondent to refer qualified applicants before permitted to look elsewhere for applicants[12] (GC Exh. 7). Here, as set forth above, the parties' written agreement and practice clearly indicate that applicants must go through the Respondent to obtain work with the signatory companies and they cannot be hired directly by the company off the street or through a referral from other sources. Although an employer may request or reject particular workers on the Respondent's referral list, and hire other workers if the Respondent is unable to fill a numerical request from the list, the Board has repeatedly held that such provisions or limited exceptions do not render an otherwise exclusive referral arrangement nonexclusive.

The Respondent cites no Board authority for the proposition that the exclusiveness of the referral service is rendered nonexclusive by the ability of an employer to hire, fire, or seek applicants from outside sources after no qualified applicants are referred to the employer.[13]

D. The Charging Party's Requests are Moot Because the Board has Investigated the Charging Party's Allegations That He Has Been Discriminated Against and Concluded That There is No Evidence of Discrimination.

The unfair labor practice charge alleges that the Respondent discriminated against the Eliases by not dispatching them for arbitrary and discriminatory reasons. That allegation was dismissed by the Regional Director (R. Exh. 2). On appeal from the Region's dismissal, the Board upheld the Regional Director's dismissal of the charge pertaining to the alleged discriminatory nonreferral of Gary Elias and stated that the investigation of the charge did not establish

> . . . . that any alleged failures in the referral system-including inaccuracies in the phone number database-were linked to unlawful discrimination, but rather to errors and inaccuracies in the operation of the automated dispatch system, which would not rise above the level of mere negligence

The complaint alleges that the information requested by the Eliases was necessary and relevant for them to evaluate whether they had been fairly treated under the Respondent's referral system. The complaint further alleges that the Respondent's failure and refusal to provide the information requested is a violation of section 8(b)(1)(A).

The Respondent argues that the complaint is moot because the Region had determined there was no evidence that the Respondent had failed to dispatch Gary Elias for arbitrary and discriminatory reasons (R. Br. at 9, 10). I disagree.

The failure to provide relevant requested information based upon a reasonable suspicion of a discriminatory referral service is an independent violation of the Act and is not linked to whether the allegation of a different violation was established during the Region's investigation of the charge. My findings that the Eliases had a reasonable belief that their referral rights may have been violated are sufficient to trigger the information requests. Gary Elias testified without contradiction that he was never referred for a trade show convention after he was qualified and received his forklift skill card. Tina Elias credibly testified that she possessed a wardrobe skill card for many years and was not called but discovered that a coworker without a wardrobe skill card was referred for a job.

As noted above, a union's duty of fair representation derives from its status as the exclusive bargaining representative of employees and a fiduciary duty arises on the part of the union not to conduct itself in an arbitrary, invidious, or discriminatory manner when representing those who seek to be referred out for employment by it. A union violates the Act when it arbitrarily denies a request for job referral information if the request is reasonably directed toward ascertaining whether the user has been treated fairly. T*eamsters Local 519 (Rust Engineering Co.),* above. The relief in such a situation, as in the complaint herein, would require the Respondent to provide the information requested by the charging party. In contrast, the relief where there is a discriminatory referral system would provide the charging party with referrals that were denied to him due to the discriminatory hiring hall service.

E. The Complaint is Barred By the Statute of Limitations in Section 10(b) of the Act.

The Respondent argues that the information requests seek records pertaining to activity that occurred more than 6 months before the requests were made, as well as records that were created more than 6 months prior to the requests. The information request of February 24 sought referrals to the Phantom of the Opera that closed on or about September 24, 2012 (GC Exh. 9). The Respondent argues that this request seeks docu-

[12] It is well settled that a hiring hall is deemed to be exclusive where the union retains exclusive authority for referrals for some specified period of time, such as 24 or 48 hours before an employer can hire on its own. *Carpenters Local 608 (Various Employers)*, 279 NLRB 747, 754 (1986).

[13] The Board has held that provisions allowing the employer to request certain referrals by name or to reject applicants not qualified and to hire from outside sources do not render the exclusive referral service nonexclusive. *International Brotherhood of Teamsters, Local 727*, 358 NLRB No. 86, slip op. at 3–5 (2012) and cases cited therein.

ments "far outside" the statute of limitations period. The Respondent maintains that the charging party waived his right to vindicate any harm he may have suffered on or about September 2, 2012, when he waited until February 24 to make his information request. The Respondent states that the allegations regarding the second request of April 24 should also be similarly dismissed because the April 24 request seeks documents outside the statute of limitations. The April 24 information request sought all referral records for the Mama Mia musical on or about January 8, 2014. The request also sought hiring hall documents for which the Eliases have skill cards from September 3, 2012, and to include any referrals during the time that Gary Elias held a forklift skill card from December 2013 to January 2014. It also sought referral records pertaining to the time that Tina Elias held a wardrobe skill card (September 2012) to the present (GC Exh. 13).

Section 10(b) of the Act is a statute of limitations and it is an affirmative defense and, if not timely raised, it is waived. *Public Service Co*., 312 NLRB 459, 461 (1983); *DTR Industries*, 311 NLRB 833, 833 fn. 1 (1993).

The Respondent's affirmative defense states that ". . . the complaint is barred by the applicable statute of limitations, as set forth in the National Labor Relations Act" (GC Exh. 1(e)).

The General Counsel argues that the Respondent failed to articulate or present any evidence at the hearing and failed to specify which allegations it believes are outside the 10(b) statute of limitations. The General Counsel also asserts that the February 20 and April 24 information requests are within 10(b) limitations from the date the charge was filed on June 18 (GC Br. at 28, 29).

The Respondent did not specify in its answer the allegations perceived as untimely and did not litigate the timeliness issue at trial, but is nevertheless now arguing that the allegations should be dismissed under Section 10(b) because the activity for the information requested is beyond the 6 month statute of limitations.

The Respondent's argument on the issue of timeliness is misplaced. The violation of the Act as alleged in the complaint is the failure of the Respondent to provide relevant records pursuant to two timely requests for information. The complaint does not allege any violations beyond the 6-month period and certainly, the complaint does not seek relief for the Eliases when they were not referred in 2012 and 2013. The Respondent, again, cites no Board authority that would allow for the dismissal of the complaint in situations where information on the activity contained in the request was outside the 6-month period. In *Carpenters Local 102 (Millwright Employers Assn.)*, 317 NLRB 1099 (1995), the union, operating an exclusive hiring hall, denied the charging party's information request for approximately 1 year of dispatch records. The Board adopted the judge's decision's that the parties had agreed that the charging party was only entitled to 6 months of dispatch records but the judge also noted that there was no precedent limiting the look back to 6 months and it was unclear whether "it was legally appropriate to equate an employee's look back rights with Section 10(b)'s 6-month rule." *Carpenters Local 102*, above, slip op. at 1105. In adopting the judge's decision, the Board held it was unnecessary to address whether the respondent could have lawfully denied requests for dispatch records dating back further than 6 months.[14]

F. Referents Are Not Entitled to Information to Determine Whether There Has Been a Violation of the Act.

A union's duty of fair representation includes an obligation to provide access to job referral lists to allow an individual to determine whether his referral rights are being protected. *Operating Engineers Local 324*, 226 NLRB 587 (1976). Thus, a union violates Section 8(b)(1)(A) when it arbitrarily denies a referent's request for job referral information. My findings above clearly establish the Eliases' reasonable belief that their referral rights may have been violated to trigger their requests for information.

The Respondent argues that "the General Counsel failed to introduce any evidence establishing how, specifically, the telephone numbers and addresses of users of the hiring hall were necessary and relevant for the charging party to conduct his investigation."

The Board affirmed the judge in *Bartenders'* finding that the charging party should have access to the requested information notwithstanding that the record was "'naked' of discrimination against registrant." *Bartenders' & Beverage Dispenser's Union, Local 165*, 261 NLRB 420, 423 (1982). Thus the *Bartenders*' holding, supports the charging party's argument that the telephone numbers and addresses of users are relevant if it helps the charging party to determine whether or not discrimination has occurred.

G. The General Counsel Failed to Establish a Compelling Government Interest in the Forced Disclosure of Hiring Hall Users' Telephone Numbers and Personal Addresses to a Private Individual that Outweighs the Substantial First Amendment Association Privacy Rights at Issue.

The Respondent argues that, "the charging party's requests directly implicate hiring hall users' and the union's and its members' associational privacy rights" (R. Br. at 11). To support its assertion the Respondent cites to *NAACP v. Alabama*, 357 U.S. 449 (1958). In *NAACP,* the Supreme Court held that "there is a vital relationship between freedom to associate and privacy in one's associations." Id. at 462. The Respondent argues that "the right of associational privacy reasonably extends to telephone numbers, which are analogous to addresses, in that a telephone number is a means for achieving contact with an individual, and which may also be used for purposes of conducting surveillance and carrying out harassment" (R. Br. at 12).

The Respondent, however, omits from its brief the Court's analysis in *NAACP*, which immediately follows the paragraph, which it does cite. The Court reasoned that the production order in that case "entail[ed] the likelihood of substantial restraint upon the exercise by petitioner's members of their right to freedom of association." The NAACP had made an "uncon-

[14] In *International Brotherhood of Electrical Workers, Local 24 (Mona Electric)*, 356 NLRB 581 (2011), the Board affirmed the judge's finding that the union violated Sec. 8(b)(1)(A) of the Act when it refused to provide 4 years of records from February 2005 to May 2009 in an information request.

troverted showing" that on past occasions where the members' identities were revealed the members were exposed to "economic reprisal, loss of employment, threat of physical coercion, and other manifestations of public hostility." The Court went on to say, "under these circumstances, we think it apparent that compelled disclosure of petitioner and its members . . . may induce members to withdraw from the Association and dissuade others from joining it because of fear of exposure of their beliefs shown through their associations and of the consequences of this exposure. . . ." *NAACP v. Alabama*, 357 U.S. at 462. Here, the Respondent fails to provide any specific incidents or support for it to reasonably believe that the charging party would harass other members after he receives the requested information or that a production order in this case would chill union membership.[15]

In my opinion, if First Amendment protections were at issue, the Respondent would have to show that the members on its list had a reasonable expectation of privacy regarding the disclosure of their names, addresses, and telephone numbers. The Respondent would also need to show that disclosure of the information would expose the referents to harassment by the Eliases. The Respondent made no such showing at this trial.

The Respondent argues that "the treatment afforded membership list under the Labor Management Reporting and Disclosure Act (LMRDA) bolsters the asserted substantial privacy right in hiring hall users' telephone numbers and addresses" (R. Br. at 13). The Respondent cites Section 401 of the LMRDA, which mandates that a union must provide a means for candidates in union elections to distribute campaign literature to union members, but states that the candidate's right to inspection does not include the right to copy the list. 29 U.S.C. §452.71(a).

In *Carpenters Local 608*, the respondent presented the same argument under the same rule of law. *Carpenters Local 608*, 279 NLRB 747 (1986). In that case, Judge Fish reasoned and the Board affirmed that, "the section of the LMRDA cited by Respondent merely regulates intraunion election campaigns in connection with disclosure of membership lists to candidates and, even at that, does not prohibit a union from granting more extensive disclosure than the statute requires." Id. Furthermore, Judge Fish opined, "clearly the intent of the statute is to provide a minimum amount of disclosure in an election campaign, not to prevent a union from doing so, or authorizing a union to decline to do so in appropriate situations." Id. Thus, the Board's affirmation of Judge Fish's analysis makes the Respondent's argument inapposite.

Moreover, the Respondent's assertion that under the Freedom of Information Act (FOIA) telephone numbers and addresses are regularly treated as private information and thus protected from disclosure is summarily misplaced. FOIA provides that any person has a right to obtain access to federal agency records. See, Freedom of Information Act, 5 U.S.C. Sec. 552 (1966). FOIA, like the LMRDA is inapplicable to the charging party's request. "The Board has rejected the argument that phone numbers and addresses are 'confidential' in the context of a request for hiring hall information." *Carpenters Local 608*, 279 NLRB 747, 759 (1986); *Bartender's* above (the Board affirmed the administrative law judge's rejection of the union's argument that the hiring hall records were confidential because the allegedly confidential information was likely available in the telephone directory).

H. The General Counsel Failed to Establish that the Respondent Violated the Duty of Fair Representation.

Having found and concluded that the Respondent operates an exclusive hiring hall, the duty of fair representation attaches to the Respondent. As such, the Respondent must provide its users with sufficient information, if requested, so they can determine whether they are being treated fairly and the Respondent is "automatically obligated" to provide such relevant information in the absence of some good reason for withholding the information. *Radio—Electronics Officers Union*, above; *Operating Engineers Local 513 (Various Employers)*, 308 NLRB 1300, 1302 (1992) ("It is well-settled that a Union which operates an exclusive hiring hall breaches its duty of fair representation under the National Labor Relations Act when it arbitrarily denies requests of its members for job referral information, where such requests are reasonably directed toward ascertaining whether such members have been properly treated in connection with the operation of the hiring hall. This doctrine does not require any particular proof of animus against the applicant, because it rests upon a near absolute view of a union's obligation in this area.").

In finding that the General Counsel met its initial burden of showing that the Respondent operates an exclusive hiring hall, a union's duty of fair representation includes an obligation to provide access to job referral lists to allow an individual to determine whether his referral rights are being protected. *Operating Engineers Local 324,* above; *Boilermakers Local 197,* 318 NLRB 205 (1995). Thus, the Respondent violates Section 8(b)(1)(A) when it arbitrarily denies a referent's request for job referral information, when that request is reasonably directed towards ascertaining whether he has been fairly treated with respect to obtaining job referrals, unless the Respondent can show the refusal is necessary to vindicate legitimate union interests. *Boilermakers Local 197*, above. When Gary Elias sought hiring hall information because he reasonably believes he has been treated unfairly by the hiring hall, the Respondent acted arbitrarily by denying the requested information. *Carpenters Local 35 (Construction Employers Assn.),* 317 NLRB 18 (1995).

The Respondent argues it has a legitimate substantial interest in preserving members and hiring hall confidence in the union by not disclosing confidential information and that the "cases finding that a union's interest in confidentiality could not justify a failure to disclosure hiring hall information have rested their conclusions on the fact the union did not actually take any steps to protect the confidentiality of phone numbers and addresses" (R. Br. at 19). The Respondent misreads the cases its cites as holding that where the union has created a policy of confidentiality of phone numbers and addresses the administra-

[15] Similarly, I find that the two information requests were not designed by the Eliases to harass the Respondent. As noted, the charge filed by Gary Elias with regard to the refusal of the Respondent to provide him with referral records has not shown to be without merit.

tive law judge and Board will hold that the phone numbers and addresses are in fact confidential. *Carpenters Local 608*, 279 NLRB 747, 759 (1986), clearly states that the union failed to establish that the policy of confidentiality was disseminated to employees, any employees sought to have the information kept confidential, or that the employees had an expectation that this information would be kept confidential. The party claiming confidentiality has the burden of proving that such interests are so significant as to outweigh the union's need for the information.

Here, I find no evidence to show that the Respondent offered any reasons as to why it had a confidentiality interest. By merely asserting that something is confidential, without more, the Respondent has not met its burden. Indeed, Foran's reply email to Gary Elias on his February 20 information request stated that he was willing ". . . to work on it tomorrow" (GC Exh. 12). In my opinion, this is not indicative that the Respondent had a problem with the confidential nature of the requested records when Foran was willing to work on providing the information to the Eliases. Although the Respondent has asserted the existence of a policy of confidentiality, it has not produced any evidence of a written policy and has not demonstrated that employees were aware of a policy of confidentiality or that the employees have an expectation that this information would be kept confidential.[16]

I. Disclosure of Phone Numbers, Names and Addresses Interferes With the Right to Refrain Contained in Section 7 of the Act.

The Respondent argues that persons on the referral lists may or may not wish to be contacted by Gary Elias to engage or not to engage in concerted activity. The Respondent states that until the General Counsel identifies the employees in the information sought by the Eliases wish to engage in concerted activity, these employees have a right to refrain from being contacted by the charging party.

The Board has held that certain types of information can be disclosed by the exclusive union hall pursuant to the duty of fair representation to verify the accuracy of hall data and ensure that the hall's hiring operations are not conducted in a discriminatory manner. In that regard, the names, addresses, and telephone numbers of list registrants, dispatch records, and dates of referral are producible and a union's refusal to supply members of this type of information may pose a violation of Section 8(b)(1)(A). *Iron Workers Local 27 (Morrison-Knudson)*, 313 NLRB 215 (1993). The Board does not impose on the General Counsel the perquisite of identifying referents interested in engaging in concerted activity with the charging party before the disclosure of their addresses and phone numbers. In addition, members and nonmembers of Local 720 are free to ignore and refrain from engaging in concerted activity if contacted by the charging party. Again, I find that the Respondent asserts a nonmeritorious argument and relies on no Board precedent for its position.

J. The Allegations Pertaining to the February 20 Request Must Be Dismissed Because the Respondent Provided the Charging Party with all Requested Information Except Telephone Numbers and Addresses.

I find this argument without merit. The Respondent cannot seriously contend that it met its obligation to provide information by merely giving the names of referents to Gary Elias. In *Carpenters Local 102*, above, the Board held that the recording of names and phone numbers was appropriate, but not social security number. In *Electrical Workers (Mona Electric)*, above, the Board held that permitting the charging party to review the names, addresses, and phone numbers of out-of-state referents was appropriate; also, *Carpenters Local 35 (Construction Employers Assn.)*, 317 NLRB 18 (1995) (the Board affirming judge's finding of a violation for union's refusal to provide requested addresses and phone information).

Gary Elias' February 20 information request was for all referrals to the removal of the show (load out) of LV Theatrical Group and was to include "names, addresses, phone numbers, open call or letter of request and list status of those referred." Gary Elias testified that he received a copy of the referral lists (R. Exh. 1). However, the referral lists did not include the telephone numbers and addresses. The Respondent argues that if Gary Elias was dissatisfied with the Respondent's responses to his request, he was obligated to inform the union, but he failed to do so.

For the Respondent to argue that it was not on notice that its responses were inadequate is contrary to the record. As a consequence of not receiving all the relevant information, Gary Elias credibly testified that he made a second request on April 24. His April 24 information request specifically stated that his February 20 request was incomplete and his April 24 request detailed the conversations he had with Foran in trying to obtain that information. Gary Elias' conversations with Foran demonstratively show that the Respondent's response to the February 20 request was inadequate.[17]

Moreover, Gary Elias credibly testified that on April 28 when he met with Cook and Foran, he was able to glimpse a copy of the referral list, but when it was about to be passed to him, it was Cook who snatched the document away and stated to Gary Elias that he was not entitled to the information. Gary Elias never received the document on that date and to have the Respondent now argue that he should have followed up and inform the Respondent of its inadequate response would be

[16] In *Detroit Edison Co. v. NLRB*, 440 U.S. 301, 314–315 (1979), cited by the Respondent, the employer was not obligated to disclose requested test scores of employees given the sensitive nature of the testing information and that the employer has a substantial interest in preserving the testing information. The Respondent finds support in *Detroit Edison*, arguing that the union also has a substantial interest in keeping confidential the phone numbers and addresses. However, in applying the balancing test articulated in *Detroit Edison Co*., the Respondent has not met its burden of proving that such interests are so significant as to outweigh the union's need to keep the information confidential, as well as not meeting its burden to seek an accommodation with the Eliases in fashioning an alternative method in disclosing the requested information. *GTE California, Inc*., 324 NLRB 424, 427 (1997).

[17] The Respondent did not seriously rebut the veracity of Gary Elias' testimony regarding the substance of his conversations with Foran over the information requested. As such, the testimony of Gary Elias has not been discredited by the Respondent.

futile since the Respondent had continuously denied the Eliases the phone numbers and addresses. The Respondent was firm and would not waiver in its position even if the Eliases had made a third request.

K. The Allegations in the Complaint Pertaining to Nonparty Tina Elias Must be Dismissed in Their Entirety.

I reject the Respondent's argument that the allegations in the complaint pertaining to Tina Elias must be dismissed because she is not specifically named therein. In *International Brotherhood of Electrical Workers, Local 24 (Mona Electric)*, above, an referent to the union's hiring hall, Willard Richardson, was permitted to review the hiring hall records, but not to photocopied information regarding out-of-state work list, including names, addresses, and telephone numbers. Richardson did not file a charge and was not named as a charging party in the complaint. The Board held that the exception taken on this point was without merit. The Board stated that the General Counsel had alleged in the complaint that the union unlawfully prohibited hiring hall applicants from recording the telephone numbers from the referral records. The Board further stated that Richardson was a witness at the hearing in support of the allegation and found that the complaint allegation encompassed Richardson.

In similar fashion herein, complaint paragraph 5 (e) alleges that the Eliases by letter dated April 24 requested information from the Respondent for all referrals for bid slips for all position for which Gary Elias and Tina Elias hold skill cards to Mama Mia . . . and the refusal to provide the information requested by the Eliases is an alleged violation of Section 8(b)(1)(A) of the Act (GC Exh. 1(a)). Consequently, I find that the complaint sufficiently encompassed Tina Elias.

I also find, as the Board noted in *International Brotherhood of Electrical Workers, Local 24,* that even if the complaint did not include Tina Elias' name, the allegation is closely connected to the subject matter of the complaint and was fully and fairly litigated by the parties.[18] In this regard, Tina Elias testified as a witness, the Respondent cross-examined her at the trial and the union's president testified to his knowledge regarding Tina Elias' situation.

L. The Respondent Has No Obligation to Provide the Charging Party a copy of Correspondence Authored by the Charging Party in His April 24 Request.

The Eliases' April 24 information request sought a copy of their letter to the Respondent dated on or about September 3, 2012. Specifically, the April 24 information request stated, in part, "From the date our written letter on or about September 2, 2012, a copy of that letter" (GC Exh. 13(b)). The Respondent argues that it was not obligated to provide a document that was authored by the charging party.

The April 24 information request was for the referral and dispatch records based upon the Eliases' reasonable suspicions of a discriminatory hiring system. The request for the hiring hall records was relevant to ascertain the validity of those suspicions.

In my opinion, assuming the Respondent was not required to provide a document already in the possession of the Eliases, I find it inconsequential that the request sought a copy of a September 2 document inasmuch as it did not impact or distract from the primary purpose of the April 24 information request, which was to obtain the referral and dispatch records. Here, the Respondent totally ignored the April 24 request and never provided a response in violation of Section 8(b)(1)(A) of the Act.

M. The April 24 Request is Overbroad and Unintelligible and Was Drafted in An Overboard Fashion For Retaliatory Reasons.

The April 24 request is neither overbroad or unintelligible. Under well-established Board law, the burden to show relevancy for an information request is not exceptionally heavy, "requiring only that a showing be made of a probability that the desired information is relevant, and that it would be of use to the union in carrying out its statutory duties and responsibilities." *NLRB v. Acme Industrial Co*., 385 U.S. 432, 437 (1967). The standard for relevancy to apply is a liberal discovery-type standard requiring only that the information be directly related to the union's function as a bargaining representative." *Acme Industrial Co.,* supra.

I find that the April 24 request was not unintelligible. Clearly, while some of the sentences were jumbled and disconnected, it unmistakenly requested the following (1) all referrals for bid slips for all positions for the Eliases holding skill cards to Mama Mia on or about January 8, 2014 (including names, addresses, phone numbers and list status of those referred); (2) From the date on or about September 3, 2012, all calls and referrals for which the Eliases have skill cards to include open call or letter of request and list status of those called with names, phone numbers, addresses; (3) With regard to Gary Elias, the date in time would temporarily end with his open call received on October 18, 2012, but would include bid slips for any referral; (4) with regard to Tina Elias, to include open and letter of request calls and bid slips for any wardrobe skill card jobs; (5) Any calls pertaining to jobs relating to Gary Elias' forklift skill card from December 2013 to January 2014 (with names, addresses, and phone numbers).

I also find that the April 24 request was relevant and meets the liberal style discovery standard. The Respondent argues that the charging party's request is overbroad. I disagreed. The Board has never definitely established a time frame as to the period of time that an information request would be considered overbroad. In *Brotherhood of Electrical Workers, Local 24 (Mona Electric)*, above, the Board affirmed the judge's decision finding a violation of 8(b)(1)(A) of the Act when the union refused an information request for the charging party to review the union's referral books from February 1, 2005, to May 10, 2009. In *Carpenters Local 102 (Millwright)*, above, the Board declined to find that a registered user of a hiring hall is limited to only 6 months of dispatch records.[19]

[18] *Pergament United Sales*, 296 NLRB 333, 334 (1989).

[19] It would also be difficult for the Respondent to argue that it was unduly burdensome to produce the dispatch records because it was not in dispute that the records were readily obtainable after the Respondent instituted an automatic dispatch system. In *Local No. 324, Operating Engineers*, the Board rejected the respondent's claim that "preparation of a list of out-of-work employees would be unduly burdensome"

The Respondent also has the responsibility to inform the Eliases that the information request is burdensome, to seek a clarification or a mutual accommodation. Here, the information requests are similar to a collective-bargaining situation, and as stated in *National Steel Corp*., 335 NLRB 747, 748 (2001).

With respect the confidentiality claim, it is well established than an employer may not avoid its obligation to provide a union with requested information that is relevant to bargaining simply by asserting a confidential interest in the information. Rather, the employer has the burden to seek an accommodation that will meet the needs of both parties.

Based on the above case precedent, it is not unduly burdensome for the Respondent to provide the charging party with the hiring hall list and dispatch records where the list is readily available and easily produced.

N. The Proviso of Section 8(b)(1)(A) of the Act protects the Respondent's Actions.

The Respondent asserts that Section 8(b)(1)(A) of the Act states that it is an unfair labor practice for a union to restrain or coerce employees in [the] exercise of their rights under Section 7 provided that this section does not impair the right of unions to establish and enforce rules of membership and to control their internal affairs. The Respondent argues that assuming that the charging party's right to examine the hiring hall records was affected by the Respondent's conduct, no job right of the charging party was affected and the Respondent had a legitimate interest in protecting the privacy of referents' information pursuant to an established union policy.

I find there is no merit to this defense. As noted above, established Board precedents clearly provide that names, phone numbers, and addresses of referents in an information request to a union that operates an exclusive hiring service are properly disclosable in a request for such information. The Board has rejected the argument that phone numbers and addresses are 'confidential' in the context of a request for hiring hall records unless the union has a legitimate interest in preserving the confidential information. *Carpenters Local 608*, above at 759. *Carpenters Local 608* clearly states that a union fails to establish that a policy of confidentiality where it fails to establish that the policy was disseminated to employees, any employees sought to have the information kept confidential, or that the employees had an expectation that this information would be kept confidential. Id.

As noted above, Cook testified to the confidentiality policy, but the Respondent has not produced any evidence of a written policy and has not demonstrated employees were aware of the policy of confidentiality or that the employees have an expectation that this information would be kept confidential. The Respondent failed to proffer any evidence that referents on the eligible list have a reasonable expectation of privacy regarding the disclosure of their addresses and phone numbers. Moreover, while the complaint does not allege that any job right of the Eliases had been affected, the Respondent's failure and refusal to provide the information request is an independent violation of Section 8(b)(1)(A) of the Act (see H, above).[20]

where the respondent admitted that "out-of-work indices containing names, phone numbers, and layoff dates are in existence and are in the possession of its business agents." 226 NLRB 587, 587 (1976).

CONCLUSIONS OF LAW

1. The Employer is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. The Respondent IATSE Local 720 is a labor organization within the meaning of Section 2(5) of the Act.
3. The Respondent violated Section 8(b)(1)(A) of the Act when it breached its duty of fair representation to Gary Elias related to the operation of its exclusive hiring hall by failing and refusing to provide Eliases with requested relevant information.
4. By engaging in the conduct described above, Respondent has engaged in unfair labor practices affecting commerce in violation of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[21]

ORDER

The Respondent, IATSE Local 720 of Las Vegas, Nevada, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Arbitrarily denying access to referral/dispatch records or other job referral information from employees who are registered for referral from its exclusive hiring hall and who reasonably believe they have been improperly denied referrals.

(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Allow Gary and Tina Elias to look at, take notes on, and/or photocopy (at their expense), all job referral/dispatch records in Respondent's possession, of all referents and all jobs, to all signatory employers to a collective-bargaining agreement with Respondent for the period from September 2012 to January 2014, to help the Eliases determine their relative referral position or ascertain whether they are being or

[20] Lastly, the Respondent raises several affirmative equity defenses in its answer including, estoppels, unclean hands, waiver, and laches. I find none to applicable in this situation. *Goodyear Tire & Rubber Co*., 271 NLRB 343 (1984) (the Board's proceedings do not constitute "courts of equity" and unclean hands, laches and estoppel are not recognized in Board proceedings); also, *International Woodworkers (Kimtruss Corp.)*, 304 NLRB 1 (1991) (the Board would not recognize the unclean hand defense that the union may have acted improperly).

[21] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes

have been treated fairly regarding job referrals by Respondent.[22]

(b) Preserve and, upon request, make available to the Board or its agents for examination and copying, all records matching the foregoing descriptions in paragraph (a).

(c) Within 14 days after service by the Region, post at its offices or hiring halls, wherever they may be maintained copies of the attached notice marked "Appendix ."[23] Copies of the notice, on forms provided by the Regional Director for Region 28, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees and members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees and members by such means.

(d) Within 21 days after service of this Order by the Region, to file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. June 23, 2015

APPENDIX

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain on your behalf with your employer

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT arbitrarily refuse to respond to or arbitrarily deny your request for access to referral/dispatch records or other job referral information to help you ascertain whether you are being or have been treated fairly regarding job referrals.

WE WILL NOT in any other manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL maintain our duty of fair representation as guaranteed you by the National Labor Relations Board.

WE WILL PROVIDE the referral records requested by letters dated February 24, 2014, and April 24, 2014, to permit Gary and Tina Elias to look at, take notes about, and/or photocopy (at their expense), all job referral/dispatch records in our possession, of all referents and all jobs, to all signatory employers to our collective-bargaining agreement for the period from September 2, 2012, to April 24, 2014, to help Gary and Tina Elias determine whether they are begin or have been treated fairly regarding job referrals.

WE WILL preserve, and, upon request, make available to the Board or its agents for examination and copying, all records matching the foregoing descriptions.

INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES, MOVING PICTURE TECHNICIANS, ARTISTS, AND ALLIED CRAFTS OF THE UNITED STATES, ITS TERRITORIES AND CANADA, LOCAL 720, AFL–CIO, CLC

[22] As I had rejected the Respondent's argument that the allegations in the complaint pertaining to Tina Elias should be dismissed because she was not named in the complaint, I now find that Tina Elias is entitled to the remedy noted above. *International Brotherhood of Electrical Workers*, above at 3.

[23] If this Order is enforced by a judgment of the United States Court of Appeals, the words in the notice reading "Posted By Order of The National Labor Relations Board" shall read "Posted Pursuant to a Judgment of The United States Court of Appeals Enforcing an Order of The National Labor Relations Board."